CF0000062640

(2)

Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR MP

CRIMINAL APPEAL NO. 3028 /1999

APPELLANT:- (IN JAIL).

BEER SINGH ALIAS POLTY
son of Sonadhar,
aged about 32 years,
resident of Gadiya Para Masgaon
Bakavand, PS. Nagamar.

Versus

RESPONDENT:- State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CR.P.C.

4/11/99
P.S. Oberoi
Advocate

Rh. A.R

CLERK
O/o Advocate General
M.P. JABALPUR

XI-HC-78

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A- 3028/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

04.01.2007

Smt. Hamida Siddique, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

Heard on I.A.No.2588/2000 for condonation of delay in filing the appeal.

As per the office report, there is delay of 8 days in filing the appeal.

For the reasons mentioned in the interim application, it is allowed. Delay is condoned.

The appeal is **admitted** for consideration.

Learned counsel for the accused/appellant submits that this is a small matter and the appellant is in detention since last more than 8 years, therefore, the appeal may itself be heard finally, to which, learned counsel for the State has no objection.

The record of appeal is already available; therefore, the appeal is heard finally with the consent of the parties.

Per L.C. Bhadoo, Ag. C.J.

This appeal is directed against the judgment of conviction and order of sentence dated 28.8.1999, passed by the Second Additional Sessions Judge, Jagdalpur, Bastar in Sessions Trial No.45/1999, whereby, learned Second Additional Sessions Judge,

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मामला क्रमांक ..... Cr.A- 3028/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

after holding the accused/appellant guilty for commission of the offence under Section 302 of IPC, sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 year.

The case of the prosecution, in brief, is that PW-1 Gangadhar, brother of the accused/appellant and son of the deceased gave a merg intimation (Ex.-P/2) in the Police Chowki – Bakawand to the effect that his elder brother namely Beer Singh has committed the murder of his mother –Somari Bai with an axe. He along with Kotwar – Lachhu, Patel Baldeo and Bhagat were present at the time of commission of the crime. This merg intimation was sent to the Police Station – Nagarnar, where based on this merg intimation, First Information Report (Ex.-P/1) was registered. The Investigating Officer left for scene of occurrence after notice to the Panchas, prepared inquest (Ex.-P/3) on the body of the deceased. While in the Police custody, the accused gave memorandum (Ex.-P/4) regarding the place where he kept axe, weapon of offence, before the Investigation Officer, who took into possession the same. In pursuance of that, axe was taken into possession under Ex.-P/5. Plain soil and blood stain soil was taken into possession under Ex.-P/6. The body of Somari Bai was sent for postmortem examination to the Maharani Hospital, Jagdalpur, where Dr. K.M. Gupta conducted the postmortem, prepared postmortem report (Ex.-P/9), in which, he opined that the cause of death was coma due to shock, as result of injury to

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मामला क्रमांक ...G.A.-3028/99..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the cervical vertebra and spinal cord. The recovered articles were sent to the Forensic Science Laboratory, Raipur, from where report (Ex.-P/18) was received

After usual investigation, the charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Session Judge, Jagdalpur, from where, learned Second Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 8 witnesses. The statement of the accused was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been implicated in a false case.

Learned Additional Sessions Judge after hearing respective counsel and perusal of the record convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the accused/appellant has not disputed the homicidal death of the deceased. Apart from that, from the ocular evidence of PW-1 Gangadhar, PW-2 – Baldeo, PW-3 – Lachhu, as also medical evidence of Dr.K.M. Gupta (PW-5), who conducted the postmortem on the body of the deceased, it is established that the death of the deceased was homicidal in nature.

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मामला क्रमांक ....G.A.-3028/99.... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 – Gangadhar, brother of the accused and son of the deceased, who was an eye-witness stated that on the fateful day, accused/appellant consumed liquor, therefore, his mother namely Somari Bai scolded him as to why he has consumed the liquor, on which, he started quarreling with his mother (deceased) and father. The quarrel was intervened by him and the accused was separated. At that time, Baldeo and Lachhu were also present. After sometime, accused came holding an axe in his hand, went to the place, where Somari Bai was sleeping and he attacked with the axe on the back side of the head, on which, she raised cries. Baldeo and Lachu who were standing outside the gate brought Beer Singh outside alongwith the axe from the place of occurrence. His father namely Sonadhar was sleeping in another room. His mother died immediately on account of the injury and he lodged the report (Ex.-P/1). The above evidence of Gangadhar is corroborated by PW-2 – Baldeo and PW-3 – Lachhu, who are the independent witnesses.

The defence has not been able to elicit any circumstance in the cross-examination of these witnesses, which discredit the evidence of these witnesses. Moreover, their evidence has been corroborated by the medical evidence, in which, the Doctor has stated that he conducted the postmortem on the body of the deceased – Somari Bai and there was a cut injury on the neck in the size of 13.0 cm x 1.0 cm x muscle bone deep. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

injury was muscle deep up to the bone. As a result of the injury, the muscle blood vessels were cut and second cervical vertebra was fractured. The above injuries were antemortem in nature, which were caused by hard and sharp object (Ex.-P/5). Therefore, from the above evidence, it is apparent that the accused/appellant was the author of the crime in question.

Learned counsel for the appellant argues that from the evidence of the prosecution, it is not established that the accused assaulted the deceased with an intention to cause ~~the~~ death, as there was a quarrel between the mother and son and in the heat of passion; accused brought an axe and attacked without premeditation, therefore, the offence against the accused does not travel beyond Section 304 Part-II of the IPC.

Learned counsel for the appellant placed reliance on the decision of the Apex Court in the matter of **Sukhdev Singh vs. Delhi State (Govt. of NCT of Delhi) reported in (2003) 7 Supreme Court Cases 441.**

On the other hand, learned counsel for the State supported the judgment of the trial Court.

In the matter of Sukhdev Singh vs. Delhi State (Govt. of NCT of Delhi), the Apex Court held that to bring the matter within Exception 4 to Section 300, the defence has to establish that (1) the crime was committed in a sudden fight (2) there was no premeditation (3) the act was in a heat of passion; and (4) the

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मामला क्रमांक ..... Cr. A. - 3028/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assailant had not taken any undue advantage or acted in a cruel manner.

In the present case, the story of the prosecution is that when accused consumed liquor, deceased -Somari Bai scolded him, some altercation took place between the accused/appellant and his parents. In the meantime, the brother of the accused – Gangadhar as also Baldeo and Lachhu came and intervened and they were separated. Thereafter, accused brought an axe and attacked his mother on the back side of the head with an axe, when she was sleeping, as a result of which, his mother – Somari Bai succumbed to the injuries instantaneously. In this case, it cannot be said that it was done in a heat of passion, because the accused and his mother were separated, therefore, there was time to cool down. Moreover, the accused came prepared with the axe and attacked his mother. Even the fourth ingredient is not satisfied, because accused took the undue advantage, when the mother was sleeping. He acted in a cruel manner by attacking with the axe on the back side of the head, as a result of which, she sustained injuries and died on the spot.

In the result, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court.

The appeal being devoid of merits is liable to be dismissed and it is hereby dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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